

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROBERT MARCELLUS JONES, JR.,

Defendant.

Case No. 2:18-cr-00411-KJD-CWH

REPORT AND RECOMMENDATION

Presently before the court is defendant Robert Marcellus Jones's Motion to Dismiss Counts Three and Four of the Indictment for Failure to State an Offense Pursuant to Fed. R. Crim. P. 12(b)(3)(B)(v) (ECF No. 26), filed April 4, 2019, the government's response (ECF No. 32), filed April 22, 2019, and Jones's reply (ECF No. 35), filed April 30, 2019.

On December 19, 2018, the grand jury returned an indictment charging Jones with, in relevant part, one count of transportation of minors for criminal sexual activity under 18 U.S.C. § 2423(a) (Count Three), and one count of coercion and enticement of minors for criminal sexual activity under 18 U.S.C. § 2422(b) (Count Four). (Indictment (ECF No. 13) at 3.) Jones argues that the indictment failed to specify what criminal sexual activity Jones allegedly intended the victims engage in, or what criminal statutes govern such conduct. In response, the government admitted that because the indictment lacked the necessary particulars or specificity to inform Jones of the charges against him, a superseding indictment had been filed which provides the necessary references to the applicable Nevada statutes. Jones replies with no objection to the substance of charges in the superseding indictment, but he argues that because he has no assurance that the counts of the superseding indictment were presented to the grand jury, his Fifth Amendment right to indictment by grand jury were violated. Accordingly, to test his theory, he

1 now requests, for the first time, that the grand jury transcripts be disclosed, and argues that the
2 reasons for the need for grand jury secrecy are no longer extant.

3 I. ANALYSIS

4 Under Rule 12(b) of the Federal Rules of Criminal Procedure, “[a] party may raise by
5 pretrial motion any defense, objection, or request that the court can determine without a trial on
6 the merits.” A motion to dismiss is generally capable of determination before trial “if it involves
7 questions of law rather than fact.” *United States v. Yip*, 248 F. Supp. 2d 970, 972 (D. Haw. 2003)
8 (citing *United States v. Shortt Accountancy Corp.*, 785 F.2d 1448, 1452 (9th Cir.), *cert. denied*,
9 478 U.S. 1007 (1986)). An indictment is sufficient to withstand a motion to dismiss if it contains
10 the elements of the charged offense in sufficient detail to enable the defendant to prepare his
11 defense; to ensure him that he is being prosecuted on the basis of facts presented to the grand
12 jury; to enable him to plead double jeopardy; and to inform the court of the alleged facts so that it
13 can determine the sufficiency of the charge. *United States v. Musacchio*, 968 F.2d 782, 787 (9th
14 Cir. 1991).

15 Jones makes no argument in reply that the superseding indictment fails to adequately state
16 an offense. Accordingly, the motion to dismiss is denied because the superseding indictment
17 remedies the deficiencies contained in the original indictment.

18 In his reply, Jones makes a request not previously made, for grand jury transcripts. The
19 court will not consider a matter brought for the first time in reply because the government has not
20 had the opportunity to respond, and so the motion is denied without prejudice on this basis alone.

21 II. CONCLUSION AND RECOMMENDATION

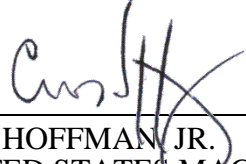
22 Accordingly, IT IS HEREBY RECOMMENDED that Jones’s Motion to Dismiss Counts
23 Three and Four of the Indictment for Failure to State an Offense Pursuant to Fed. R. Crim. P.
24 12(b)(3)(B)(v) (ECF No. 26) be DENIED.

25 III. NOTICE

26 This report and recommendation is submitted to the United States district judge assigned
27 to this case under 28 U.S.C. § 636(b)(1). A party who objects to this report and recommendation
28 may file a written objection supported by points and authorities within fourteen days of being

1 served with this report and recommendation. Local Rule IB 3-2(a). Failure to file a timely
2 objection may waive the right to appeal the district court's order. *Martinez v. Ylst*, 951 F.2d
3 1153, 1157 (9th Cir. 1991).

4
5 DATED: May 2, 2019

6
7 
8 C.W. HOFFMAN, JR.
9 UNITED STATES MAGISTRATE JUDGE
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28